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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/675,671	09/29/2000	Yoshito Shibauch	4035-0116P	3850

7590 01/29/2003
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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/29/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/675,671

Applicant(s)
Yoshito et al

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov. 14, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-16 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: |

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1. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayfield in view of Mally et al and Nakajima for the same reason set forth in paragraph 3 of the previous office action.
2. In the response filed Nov. 14 2002, applicant argues the present invention includes no application of an edible film and if the external layers were sprayed with the edible film of Mayfield, the external layers would not be able to bond on one side with an intermediate layer. This argument is not persuasive. The product as claimed does not exclude the edible film disclosed by Mayfield. Furthermore, Mayfield also teaches the application of an edible film to the exterior surface of the external layers. The application of the film to the intermediate layer is only one embodiment of the Mayfield's disclosure. It would have been obvious to one skilled in the art to apply the film to only the surface when it is desired to prevent sticking. Furthermore, applicant has not shown that the application of the film will prevent bonding. The intermediate layer by nature of its location will bond to the external layers. With regard to the Mally et al reference, applicant argues since only one surface of the product is flat, it would be impossible to pile the Mally et al finished product. There is no reason to conclude that a slightly raised surface can not be piled; furthermore, when piling with another material, it would have been obvious to use the flat surface. With respect to the Nakajima reference, applicant argues there is no explicit teaching of flat or platy layers. Nakajima teaches forming a sandwich foods from two separate sheets that are pressed together. The sheets are flat layers. Furthermore, it would have been within the skill

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of one in the art to alter the shape of the materials when the materials are used to make layered food product such as that taught by Mayfield.

3. Applicant's arguments filed Nov. 14, 2002 have been fully considered but they are not persuasive.


4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

January 24, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1700